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SUPREME COURT U.S.

No. [redacted]

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D., 1906.

WARREN B. WILSON, *Appellant,*

vs.

LESLIE M. SHAW, Secretary of the Treasury, Etc., *Appellee.*

No. 43.

PETITION FOR REHEARING.

WARREN B. WILSON,
APPELLANT.

LEONARD & MILLER PRINT. CHICAGO.

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Supreme Court of the United States.

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WARREN B. WILSON, *Appellant,*
vs.
LESLIE M. SHAW, Secretary of the Treasury, Etc., *Appellee.*

No. 43.

Comes now Warren B. Wilson, the Appellant herein, and moves the Court to set aside the order of affirmance herein and for a rehearing of the above entitled cause.

WARREN B. WILSON,
Appellant.

I hereby certify that, in my opinion, this petition is well founded in point of law and should be allowed.

WARREN B. WILSON,
Appellant.

PETITION FOR REHEARING.

The first reason alleged by the court why the prayer of the bill should be denied and the decree below affirmed, is that

> "the amount of complainant's interest is not disclosed."

But is that a reason? Does the court really mean to commit itself to the proposition that it would listen to a petition of this character from the President of the Whiskey Trust and grant him relief, but would not do the same thing for a lawyer, or a blacksmith, or a farmer? That if the President of the Whiskey Trust can allege that he has many distilleries and hogs which a lawless plundering of the public treasury exposes to increased taxation the "interest" which he thus discloses, should cause the court to hasten to his protection. But if a farmer, a blacksmith, or a lawyer, by industry and economy in an honest calling, has acquired a little home or a more humble provision for his family, exposed in the same way, to be taken from him by increased taxation to make good the waste caused by the same plunder of the public treasury, that that is a matter of indifference to the court—that the constitution is made solely for rich men.

That the beneficiaries of the trust upon which the custodian of the funds in the United States treasury holds these funds are solely those "the amount of whose interest" when disclosed is sufficient to excite the respect of the judges?

The opinion says it is "startling" that the demand made in this bill that the secretary of the treasury should be enjoined from dissipating the public funds without an appropriation made by law should be made by such a person as the complainant "who does not disclose the amount of his interest."

This question has not been raised, nor this position taken, before in this case. But the law is no respecter of persons in this regard. The only question that can ever properly arise as to the "amount of the interest" is in determining the jurisdiction of the court. There are some cases where the jurisdiction of the court depends on showing a given amount involved. But that is not this case. The amount involved in such a case as this, is not the amount of the taxable estate of the complainant, but the amount of the expenditure sought to be controlled. No bill of this kind ever alleged anything as to the amount of property complainant owned.

Again, it is a physical impossibility that the amount of the interest of a complainant, in this sense, could ever be disclosed. A showing might be made of the amount of his taxable estate at the time the bill is filed. But that is not the question. It is, or would be on that theory, the amount which he will own at some time in the future when increased taxes are levied to make good the shortage caused by the lawless expenditure. That, of course, can not be known. This may be a less certain interest than is deemed essential in some other kinds of cases. But in this kind of case it is too well established that the interest is sufficient to be debatable

and applies, like other objections, to suits against state officials with exactly the same force as to the custodian of the Federal funds.

But all this makes no difference here. The jurisdiction of the Supreme Court of the District of Columbia is not doubtful. In suits brought in the Circuit courts, there is a limitation that the amount involved must exceed two thousand dollars ($2,000.00).

But this limitation does not apply to the Supreme Court of the District of Columbia. That court has general equity jurisdiction without regard to amounts involved.

There are, also some limitations upon the jurisdiction of this court based on the amount involved.

But they do not apply here. Appeals lie from the Court of Appeals of the District of Columbia to this court.

> "Also in cases *without regard to the sum or value of the matter in dispute* wherever is involved the validity of any patent or copyright or in which is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States."
>
> Sec. 8. "An Act to establish a court of Appeals for the District of Columbia and for other purposes."

The only proper purpose for which the court can, in any case, look at the "amount of the interest" of a complainant is to determine whether the case is one within the jurisdiction of the court—that being determined, the question is entitled to no further consideration. There is no possible reason why, in such a suit as this, the aldermen of New Orleans

should be enjoined from lawlessly taking a few thousand dollars from the city treasury to give themselves a junket to Philadelphia that does not apply with exactly the same force to a suit by this complainant or any, even the most humble, citizen of the United States, demanding that the custodian of the United States funds should be restrained from drawing money from the United States treasury without an appropriation made by law to scatter at home or abroad in lawless speculations.

The only questions in either case are these:

1. Is the complainant a citizen—a beneficiary of the trust sought to be enforced? Is he, or is he not, a taxable inhabitant, a person legally liable to be called on by Congress when money is hereafter needed for lawful purposes (even to the extent of a poll tax), to contribute to make good the shortage thus occasioned?

2. Is the money proposed to be taken drawn from the treasury in consequence of appropriations made by law?

If it is established that the complainant is such a person—a beneficiary of the trust; a taxable inhabitant:

And that the public money is being withdrawn, not in consequence of appropriations made by law, then it is fully established that the court has the power, and is charged with the duty, to put a stop to it.

It is admitted that the demand is a great one. But that is no reason for the court to be "startled." If the court should stop the lawless withdrawal of

a thousand dollars, it should, under the same conditions, stop a million or ten or a hundred or five hundred millions.

The only "startling" thing about the matter is that the Supreme Court of the United States should be "startled" at the idea that a citizen disclosing as the basis of his right only his citizenship and legal liability to be called on to contribute by taxation to the public treasury should presume to think himself entitled to demand from this court that the Constitution should be obeyed by men in high places as well as by the lowly.

The main distinction between our system of government and that of other nations is that the law is supreme over everybody. * * * In countries without a written Constitution, *e. g.*, Great Britain, the mandates of the so-called Constitutions are mere admonitions to the consciences of officials.

Here, on the other hand, every provision of our written Constitution is the positive law, and the courts are established; especially under more recent limitations of its jurisdiction the principal reason for the continued existence of this court is to compel obedience to the Constitution by great as well as small.

There is nothing new or experimental about this case so far as the method of procedure is concerned. It is the perfectly familiar and long established and practically exclusive remedy for the exact grievances here complained of—a threatened unlawful waste of public funds. It has been repeatedly applied against officials occupying positions in the state governments exactly like that of the Secretary

of the Treasury in the federal government, and for and against whom every argument that ever has been or can be urged for or against this proceeding applies with exactly the same force. But if the only kind of a case that can by any possibility be made to test the validity of any proposed expenditure "startles" the court into abdicating all authority and refusing to interfere, is it not plain that the provision that "no money shall be drawn from the treasury but in consequence of appropriations made by law", is a dead letter, or at least taken out of the mandatory rank of written provisions and put into the class of unwritten law, which, in some other countries under different systems of government, is called a Constitution.

II.

The position taken by the appellant as to the nature of the rights of the United States in the canal strip and their effect upon the authority of Congress to do the things in question there is believed to have been misapprehended by the court.

The court says:

> "Another contention in support of which plaintiff has presented a voluminous argument is that the United States has no power to engage in the work of digging this canal. His first proposition is that the canal zone is no part of the territory of the United States and that, therefore, the government is powerless to do anything of the kind therein."

Then follow Articles 2 and 3 of the treaty.

> "Other provisions of the treaty add to the grants named in these two articles further guar-

> anties of exclusive rights in the construction and maintenance of this canal. It is hypercritical to contend that the title of the United States is imperfect and that the territory described does not belong to this nation because of the omission of some of the technical terms used in ordinary conveyances of real estate."

That is not the point. When a corporation in the United States, public or private, trading or political, proposes to erect and operate a business plant anywhere two things must be established:

1. The owner of the territory in which it is proposed to build and operate the plant must have granted the right.

2. The charter of the corporation must give the right to use the corporate funds for the purpose.

Two different sets of people having different rights must be consulted and the consent or authority to act for both secured:

1. The people who own the ground where the plant is to be established and operated.

2. The people who own the money proposed to be employed, viz.: the shareholders of the corporation.

The objection taken to these proceedings is that the second of these conditions has not been complied with; whereas the opinion proceeds on the theory that the objection is to the first.

It is not denied that Panama has in the fullest possible manner given the property rights to build and operate the canal and railroad. It has not been argued that this grant is defective because not made to the United States and its heirs. But the only

question in this case is the second, whether the charter of this corporation authorizes the expenditure of the money for the purpose.

The nature of the right of the United States at Panama is entitled to consideration only as it affects that question.

This power can come alone from the Constitution and can not be conferred or enlarged or diminished by Panama.

There are just two possible powers to which this has been referred:

1. The power of Congress to govern the territory of the United States.

2. The power to regulate commerce among the several states, with foreign nations and the Indian tribes.

In considering whether either of these powers authorizes the thing proposed a vital question is whether the place where the thing proposed to be done is within or without the territorial limits of the United States.

The fullest grant of property rights may have been made, but unless the *sovereignty* has been granted the property is not the "territory of the United States." The United States may have property rights in foreign territory. But unless the land has become the territory of the United States in the same sense as Arizona or Porto Rico nothing done there by the United States can be either:

1. Governing the territory of the United States, or,

2. Regulating interstate commerce.

It is plain that anything done in territory outside the territorial limits of the United States can not be an exercise of either of these powers, no matter who may hold the property right, whether a citizen or a foreigner, a local or foreign corporation, or the United States itself.

Is this strip, then (not the property) but the territory of the United States in the same sense the land, both public and private, in Arizona is? It is to this question that the argument already made is addressed.

1. The treaty grants only the right to use and occupy the land for canal purposes.

2. The political departments of the government have distinctly taken the position that it is not United States territory and the only authority the United States will exercise is such as is necessary to protect the canal.

See letter of the President, cited on pp. 23 and 24 Reply Brief, and pp. 173 and 174 of Original Brief.

III.

The opinion announced on the constitutional question of the power of Congress to engage in such an enterprise as this the appellant feels entitled to ask the court to reconsider.

A serious constitutional question is decided without any examination of the Constitution itself, but solely upon the authority of certain adjudged cases.

The cases cited (their facts, certainly), are not in point. This court has repeatedly held this must not

be done. That a decision upon one state of facts, no matter what the language of the opinion, must not be allowed to conclude another state of facts.

Cohens v. *Va.*, 6 Wh., 264.
Carroll v. *Carroll's Lessee,* 16 How., 275.
Northern Bank v. *Porter Township,* 110 U. S., 608.
Downes v. *Bidwell,* 182 U. S., 244.

The facts and statute under consideration in the case relied upon, *California* v. *C. P. R. R. Co.,* 127 U. S., 1, were these:

A series of statutes had authorized certain private transportation corporations to build and operate interstate railroads. The court held Congress had authority to "pass these laws" under the power to regulate commerce. That interstate transportation by land conveyances as well as by water was carrying on commerce, and, therefore, Congress might authorize or forbid it to be carried on by persons or trading corporations according to such rule or subject to such conditions as Congress might prescribe. That Congress had plenary authority to *regulate* the whole subject of interstate land transportation.

The question whether under this power to "regulate commerce" Congress has the power to itself at the public risk with the public funds *carry on that commerce* was not in the case cited.

The law there under consideration did not provide for Congress to carry on the transportation business or to build any plant adapted or intended as a means to carry it on. It follows, therefore, that the fact that the court has held the commerce clause gave power to prescribe the rule according to which, the

manner, terms and conditions upon which, a private trading corporation should carry on this commerce and establish a plant adapted and intended as a means to that end should not be taken as a sufficient reason for holding that Congress had itself authority to do the same thing that in the former case was held to be carrying on commerce, but the direct contrary. A holding that this thing, building and operating interstate railroads, was carrying on commerce, and, therefore, subject to congressional regulation under the commerce clause, is a holding that that thing is not regulating commerce, but a thing to be *done* by private individuals or corporations, and *regulated* by Congress.

Chief Justice Taney advocated the proposition that no precedent should be conclusive upon constitutional questions, but former decisions should be given only such weight as the reasoning of the opinion entitled them to. But all agree that no former decision, especially upon a constitutional question, should be held conclusive except to the extent of the facts involved. But when new facts are presented in a new case the constitutional question must be determined by an examination of the instrument itself.

But in the present case the court without any consideration of the language of the constitution has affirmed the power of Congress under the commerce clause with the public funds to carry on the commerce of dealing in transportation and for itself to build a plant adapted and intended solely as means to that end solely on the ground that in a former case the court had affirmed the power of Congress to prescribe the rule according to which or the condi-

tions upon which private corporations might do the same thing.

The court has misapprehended the position of appellant as to the language quoted from *California* v. *C. P. R. R. Co.*, 127 U. S., 1.

The court says:

> "Again plaintiff contends that the government has no power to engage anywhere in the work of constructing a railroad or canal.
>
> The decisions of this court are adverse to this contention.
>
> *Cal.* v. *C. P. R. R. Co.*, 127 U. S., 1.
>
> *Luxton* v. *N. R. B. Co.*, 153 U. S., 533.
>
> "Plaintiff recognizing the force of these decisions, seeks to obviate it by saying that the expressions are *obiter dicta.* But plainly they were not. They announce distinctly the opinion of this court on the questions presented, and would have to be overruled if a different decision were now announced."

Now, that is exactly what the appellant did not and does not contend.

The appellant did not say "that the expressions are *obiter dicta,*" but the exact reverse—that the language was decision and not *dictum.*

That properly construed the language of that opinion merely relates to the case then at hand and only intends to affirm the power of Congress to do the thing then under discussion, *i. e.*, "*to pass these laws*"; "that Congress has authority in the exer-"cise of its power to regulate commerce among the "several states, to *authorize corporations* to con-"struct railroads across the states as well as the "territories of the United States."

But (and this is the only way the *obiter* reference

to this opinion was made) if the court should read that language differently, and should conclude it was the purpose of the court in using the words quoted to express an opinion on another question the facts then at hand did not present or involve; if it was the purpose of the court to express an opinion that Congress had power under the commerce clause to carry on the commerce of dealing in transportation and establish the needed business plants; when the facts only raised the question of the power of Congress to *regulate* the carrying on of that commerce by private persons or corporations then *pro tanto* that part of the opinion was *dictum*. And is there any doubt that that position is sound?

The only answer of the opinion to this position is this:

> "Plaintiff recognizing the force of these decisions, seeks to obviate it by saying that the expressions are *obiter dicta*. But plainly they were not. *They announce distinctly the opinion of this court* on the question presented."

But is that an answer? Does the question whether any given language is decision or *dictum* depend on how clearly or vaguely the opinion of the court may be announced? Not at all. But solely on the question whether the *facts of the case present the question.*

Now, did or did not the facts in *California* v. *C. P. R. R. Co.* include an effort by Congress to build and operate the Central Pacific Railroad? If not and any language of that opinion could be construed as affirming such authority is such language not plainly *obiter?*

The difference between *dictum* and decision arises when the language of the court is cited as authority in later cases.

The uniform rule specially and repeatedly emphasized by this court from *Cohen* v. *Va.* to *Downes* v. *Bidwell* is that when such an opinion is cited it is, if *the facts* of the case do not present the question, not to be accepted as authority no matter how clearly that opinion may have been announced.

But this case is decided solely on authority and on the authority of a case not involving the facts here presented.

The court proceeds further, that the opinion (in *Cal.* v. *C. P. R. Co.*) "would have to be overruled if a different doctrine were now announced."

Of course if the court should now determine contrary to the essential statement of that opinion that Congress had not power "to pass these laws", had not power to authorize individuals or transportation companies to build and operate interstate railroads, *i. e.*, to carry on the commerce of dealing in interstate land transportation and build the plants adapted and intended as means to that end the "opinion of this court *on the question presented*" "would have to be overruled."

But that is not suggested.

"Any change would disturb a vast volume of rights supposed to be fixed."

Of course it would. If the validity of the Pacific Railroad charters or their power to carry on interstate commerce were now denied "a vast volume of rights" represented by the bonds and stocks

and other securities of those companies would be disturbed. But how would that "vast volume of rights" be disturbed by a denial of the right of Congress on account of the United States to build and operate a road between the same points in competition with their road?

Who has ever invested a dollar on the faith of any such power of Congress? Where is the railroad Congress has built and operated in which anybody has invested a dollar?

IV.

The opinion concludes:

> "The Court of Appeals was right and its decision is affirmed."

But if the Court of Appeals is right this court is wrong.

The two opinions distinctly conflict.

The Court of Appeals says:

1. The canal zone is part of the territory of the United States. That proposition is doubtful, but the courts ought to hesitate to find otherwise.
2. The construction and operation of a railroad and commercial canal like this in that strip is an exercise of the power to govern the territory of the United States, and
3. Is not an exercise of the power to regulate commerce.

This court, on the other hand, holds with the Court of Appeals:

1. "The strip is part of the territory of the United States."

But against the Court of Appeals:

2. The construction and operation of a railroad or canal in this strip is an exercise of the power to regulate interstate commerce.

On the first of these propositions the argument has already been submitted:

(1) That the treaty plainly grants only a property right, but not the ultimate sovereignty.

(2) That the position of the court is in direct conflict with the political departments of the government.

On the point as to which the two opinions do not agree while the opinion filed here indicates an impression that the two courts are in harmony, it is proper to ask the court to at least review that part of its opinion even if its judgment of affirmance remains. So far as the particular case is concerned it may make no difference. But this decision is also important as a precedent and ought not to attempt to settle any question, especially a constitutional question of great importance, unless the facts require it.

Now, even if this is the territory of the United States, is it not clear that what is done there is not an exercise of the special power to regulate commerce among the several states with foreign nations and the Indian tribes?

Whether the construction and operation of railroads and other transportation plants; or in any form carrying on the commerce of dealing in transportation is within or without the limits of that power is not at all involved in legislation affecting only the territories.

Whether Congress is authorized to engage in such business in Arizona or Porto Rico is one question that the commerce clause has nothing to do with.

But whether Congress is authorized to carry on the same commerce or even build a public highway between New York and Chicago is another and very different question that the commerce clause has everything to do with.

Multitudes of thinking people who regard the enterprise immediately involved here as a public advantage would regard the entry of the United States into the transportation business in the states as a public calamity.

This idea that the government should in addition to the business of constitutional government take over and operate the entire railroad and transportation business of the country has of late secured a surprisingly large number of adherents. The power of the state governments to do this is more than doubtful, especially since *South Carolina* v. *United States* was decided, but so far as the Federal Government is concerned it certainly has been the very widespread understanding that in the limited nature of that government, in the fact that the power of Congress over commerce is only to *regulate* a limited number of kinds of commerce and to carry on just one kind, viz.: the distribution of the mails, together with the repeated adjudications of this court that the carrying trade, the construction and operation of railroads was carrying on commerce, and because and only because it was carrying on commerce, might be regulated by Congress; that in

these things we had a sure constitutional quarantine against the spread of that contagion.

Now the present opinion of the court that the Pacific R. R. cases govern this case is in substance a decision that the construction and operation of a railroad is regulating commerce. The Pacific R. R. cases did not place the power then exercised in the authority to govern the territories. For those cases a power operative in the states was required. A decision that the construction and operation of a railroad anywhere is regulating commerce is not called for here.

A decision that the construction and operation of a railroad by Congress for account of the United States anywhere, whether in the territories or elsewhere, is sustained by *California* v. *C. P. R. R. Co.*, is a decision that such an act is an exercise of the power to regulate commerce, because that case was decided on the commerce clause.

When, then, if ever, an effort may be made hereafter by a congress elected in some moment of excitement by a temporary majority to use the public funds to do the same thing in the states, and conservative people appeal to this court for protection, the argument will be hard to meet that this court has in this case held that the construction and operation of a railroad is "regulating commerce," and what is regulating commerce in one place is regulating commerce in another, and the things which constitute regulating interstate commerce are things that Congress can do in the states. Thus, when for the first time Congress attempts to do this most important thing and when, therefore, the question of

its power can for the first time be presented to the court, the question is foreclosed. If the decision is to follow the Court of Appeals, ought not the opinion of that court also to be followed, and only this case be decided? If this thing is being done in the territories only, and is to be sustained, ought it not to be referred, as the Court of Appeals did, to the only power there applicable, viz.: the power to govern the territories, and not to the power to regulate commerce, applicable only in the states?

Ought not that question, whether the construction and operation of a railroad in the states, is regulating or carrying on commerce, to be left to be decided when a case involving those facts arises?

The court suggests the argument is "voluminous." In preparing the argument it was necessary, having a negative to establish, to consider at length other clauses that might be claimed as sources of this power. But as the matter has come down to the two powers to regulate commerce and to govern the territories, the discussion of those subjects is from pp. 81 to 114 and from 171 to 188 of the original brief and in the reply brief. This, however, is only intended for the convenience of the court and is not offered as an apology for the length of the brief. It is not unnecessarily extended.

V.

There is nothing especially sacred about the present form of the constitution. The people of today are, of course, with their better knowledge of existing conditions, better able to judge what is

good for them than the men of 1789. The men of 1789 understood that; did not think wisdom would die with them, and provided a method for amendment. If the powers granted have by experience been shown to be either too small or too great or improperly lodged, they can be changed. But the question is how. There are two methods:

First, by amendment in the manner provided.

Second, by seizing the new powers.

Modern progressive statesmanship has devised another way—by construction.

Thus the Secretary of State, on December 12th last, at New York, in a public address said:

> "The people will have the control they need, either from the states or from the National Government, and if the states fail to furnish it in due measure, sooner or later CONSTRUCTIONS OF THE CONSTITUTION WILL BE FOUND TO VEST *the power where it will be exercised, in the National Government.*"

Not *amendments* will be *made* to vest the power, but "*constructions of the constitution will be found* to vest the power * * * in the National Government." Later the Secretary of State said he was only describing facts and tendencies, not defending them.

But the President more distinctly and openly avows this as the proper method of adding to his powers. At Harrisburg October 4, 1906, the President said:

> "In yet others it has become increasingly evident that no efficient state action is possible, and that we need *through executive action,*

through legislation and THROUGH JUDICIAL INTERPRETATION AND CONSTRUCTION OF LAW TO INCREASE THE POWER OF THE FEDERAL GOVERNMENT."

The old constitutional method of "*increasing*" the powers of the Federal Government is not even thought of or mentioned as among possible methods to be considered under any circumstances.

Again, in a public address at Boston on February 23, 1907, the President said:

> "States' rights should be preserved where they mean the people's rights, but not when they mean the people's wrongs; not, for instance, when they are invoked to prevent the abolition of child labor or to break the force of the laws which prohibit the importation of contract labor to this country; in short, not when they stand for wrong or oppression of any kind or for national weakness or impotence at home or abroad."

In other words, constitutional limitations upon the powers of governing agents ought only to be enforced when those agents propose to do things that in the judgment of those agents ought not to be done. That is, the President should disregard all limits upon his powers whenever he thinks best.

Another public man in a public address has said:

> "The Supreme Court can be depended on to make the constitution whatever the people want it to be."

In other words, whenever, in the judgment of the President or Congress, it seems necessary or desirable that new power should be granted, the proper process to secure it is not "to apply for it to those for whose benefit it is to be exercised," but

the powers should be simply seized and this should be made permanent by the court. The part in this increasing process assigned the court is that from time to time the judges should, in direct violation of their oaths of office, falsely declare from the bench that the constitution means what they know it does not mean. This is exactly what Washington warned against in the farewell message:

> "If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way the constitution designates. But let there be no change by usurpation, for, though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield. * * * One method of assault may be to effect in the forms of the constitution alterations which will impair the energy of the system and thus to undermine what cannot be directly overthrown."

And what Jackson later emphasized:

> "If experience points out the necessity for an enlargement of these powers, let us apply for it to those for whose benefit it is to be exercised, and not undermine the whole system by a resort to overstrained construction."
>
> Jackson's Message to Congress, December 8, 1829.

The only new thing about this is that it should be openly avowed and defended.

It is of course not conceivable that any member of this court, present, past or future, would consciously "approve" those "that speak thus of him at Rome."

But the result is the same whether the court taking orders from an executive acting on these principles corruptly misstates the constitution, or for any reason, whether in deference to supposed public sentiment, from hesitancy to enforce the laws by decrees that control great as well as small violations and violators—from sympathy with the policy of legislation in question—from impatience with an obstinate, unreasonable litigant that insists on having his own way about a great matter, when the majority is against him, or from mere inattention allows itself to be stampeded by ambitious executives attempting to commit the government to unconstitutional projects, or for any reason honestly but unconsciously fails to ascertain and enforce the law.

Either course "undermines the whole system."

With this spirit in the air openly avowed and acted on, it is thought proper to suggest to this court, the body charged by the constitution with the especial duty of preventing all such exercise of ungranted power, whether such questions as are here involved do not justify an investigation of the meaning of the constitution from original sources.

Respectfully submitted.

WARREN B. WILSON.